

QUEENSLAND DEFAULT COORDINATION AGREEMENT

This Agreement applies in accordance with section 55I of the *Electricity Act 1994* (Qld) (the *Act*) to a Distributor and Retailer, where a specific negotiated coordination agreement under section 55H of the Act is not in force.

BACKGROUND

- A. The Distributor is the holder of a *distribution authority* and the Retailer is the holder of a *retailer authorisation*.
- B. The Retailer wishes to sell electricity to *customers*.
- C. The Distributor and the Retailer have agreed that, in order to avoid duplication, encourage efficiency and streamline their respective relationship with *customers*, the Distributor and the Retailer will coordinate with each other the performance of certain of their functions and obligations under *applicable law*.
- D. This Agreement sets out:
 - (a) the respective rights and obligations of the Distributor and the Retailer concerning the discharge by one party of certain of the other party's functions and obligations to each *customer* under *applicable law*; and
 - (b) the communication protocols between the Distributor and the Retailer which apply in respect of their functions and obligations in respect of *customers*.

THE PARTIES AGREE as follows:

1. DEFINITION AND INTERPRETATION

1.1 Defined Terms

In this Agreement, unless the context otherwise requires, defined terms are italicised and are:

'**Act**' means the *Electricity Act 1994* (Qld) and all regulations, notices, orders and other statutory instruments made or issued under that *Act* from time to time;

'**AEMO**' means the Australian Energy Market Operator (ACN 072 010 327);

'**applicable law**' means the *National Electricity Rules*, the *Act*, the *Electricity Regulation 2006* (Qld), the *Electrical Safety Act 2002* (Qld), the *Electrical Safety Regulation 2002* (Qld), the *Electricity Distribution Network Code* and any other legislation, industry codes, authorities, or regulations with which the Distributor or the Retailer must comply in relation to:

- (a) the *customer's connection* to the *distribution network*;
- (b) the maintenance of that *connection*;
- (c) the supply of electricity to a *customer* via a *connection point*; or

(d) the sale of electricity by the Retailer to that *customer*;

'B2B Procedures' means the procedures under the *National Electricity Rules* or as otherwise agreed between the parties, prescribing the content of, the processes for, and the information to be provided to support communications between the Distributor and the Retailer relating to a *customer* or supply of electricity to a *customer*;

'business day' means a day other than a Saturday or a Sunday or a Queensland wide public holiday (as appointed under the *Holidays Act 1983 (Qld)*);

'CATS' means Consumer Administration and Transfer Solution operated by *AEMO* and forming part of *MSATS*;

'Claim' means a claim, action, proceeding, loss, liability, cost or expense whether arising in contract, tort (including negligence), equity or otherwise in respect of an event occurring after the date of this Agreement;

'commencement date' means the date of this Agreement;

'Confidential Information' has the meaning given in clause 16.1;

'connection point' has the meaning given in the *National Electricity Rules*;

'connection contract' has the meaning given in the *National Electricity Rules*;

'customer' means a customer as defined in the *Act* and to whom this Agreement applies under clause 5;

'customer connection services' has the same meaning as in the *Act*;

'dispose' means assign, transfer, lease, sub-lease, licence or otherwise dispose of any legal or equitable estate (either in whole or in part) whether by sale, lease, licence, declaration or creation of trust or otherwise;

'distribution authority' has the meaning given in the *Act*;

'distribution network' has the meaning given in the *National Electricity Rules*;

'Electricity Distribution Network Code' means the Electricity Distribution Network Code made under the *Act*;

'force majeure event' means, with respect to any party, any event or circumstances which are not within the reasonable control of that party;

'GST' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

'GST law' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

'Guaranteed Service Levels' or **'GSLs'** has the same meaning given to the term guaranteed service level in the *Electricity Distribution Network Code*;

'Independent Expert' shall have the meaning in clause 11.4(a);

'MSATS' means the Market Settlements and Transfer Solution system operated by *AEMO*;

'National Electricity Law' has the meaning given under the *Electricity National Scheme (Queensland) Act 1997 (Qld)*;

'National Electricity Rules' means the rules made under the *National Electricity Law* applied as a law of Queensland;

'National Energy Retail Law (Queensland)' has the meaning given in the *National Energy Retail Law (Queensland) Act 2014 (Qld)*;

'NEM Representative' means a related body corporate of the Retailer which is registered as a *market customer* with *AEMO* and which, directly or indirectly, on-sells electricity to the Retailer for sale to *customers*, as notified by the Retailer to the Distributor from time to time under clause 4.1;

'network charges' has the meaning given in the *National Electricity Rules*;

'NMI' means a national metering identifier as defined in the *National Electricity Rules*;

'Operational Procedures' means the document as published from time to time by the Distributor detailing the operational parameters for processes and interactions which are to be adopted by the Distributor and the Retailer to give effect to the parties' obligations under the Agreement, *B2B Procedures* and *applicable law*;

'premises' has the meaning given in the *Act*;

'Regulator' has the meaning given in the *Act*;

'related body corporate' has the same meaning as in the *Corporations Act 2001 (Cth)*;

'retailer authorisation' has the meaning given in the *National Energy Retail Law*;

'retail contract' has the meaning given in the *Act*;

'Service Order Request' means the Retailer's service request raised in accordance with:

- (a) the "B2B Procedures (Service Order Process)" as applicable to Queensland, or
- (b) an agreement between the parties in accordance with clause 7.2A.4(k) of the *National Electricity Rules*;

'statement of charges' has the meaning given in the *National Electricity Rules*;

'Tax Invoice' has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

'Taxable Supply' has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

1.2 National Electricity Rules Definitions

In this Agreement, unless the context otherwise requires words appearing in italics (but not including words appearing in italics as Act titles) and not defined in clause 1.1 of this Agreement have the meaning given to them in the *National Electricity Rules*.

1.3 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to any *applicable law* includes any consolidations, modifications (statutory or otherwise) or re-enactment of, or any regulatory provision substituted for, that *applicable law*;
- (b) a reference to any party to this Agreement includes that party's successors and permitted assignees;
- (c) words indicating the singular include the plural and vice versa and words importing one gender include all other genders;
- (d) other grammatical forms of words or phrase defined in this Agreement will have a corresponding meaning;
- (e) headings are for convenience only and do not affect the interpretation of this Agreement;
- (f) a reference to a person includes a firm, body corporate, unincorporated association or authority whether or not it comprises a separate legal entity;
- (g) a reference to a clause is a reference to a clause of this Agreement;
- (h) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals and schedules and annexures to that agreement or document;
- (i) a reference to writing includes any mode of representing or reproducing words in a visible form;
- (j) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (k) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) a reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to *dollars* and \$ is to Australian currency;
- (o) mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included;
- (p) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it; and
- (q) a reference to time is a reference to Queensland time.

1.4 Consents or approval

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

1.5 Inconsistency with applicable law

In the event of any inconsistency between the provisions of this Agreement and the provisions of any *applicable law*, the provisions of that *applicable law* will prevail to the extent of that inconsistency.

2. CONSIDERATION AND TERM

2.1 Consideration

In consideration of each party agreeing to assist in discharging certain of the other party's functions and obligations to the *customer* under *applicable law* and to be bound by the limits on liability contained in this Agreement the parties agree to mutually perform the obligations set out in this Agreement.

2.2 Term

This Agreement will commence on the *commencement date* and will continue until terminated in accordance with clause 8.

3. OBLIGATIONS CONCERNING SERVICE ORDER REQUESTS

3.1 Attempt to Carry Out a Service Order Request

If the Distributor attempts to carry out a *Service Order Request* as requested by the Retailer, but through any act or omission of the *customer* is unable to complete the *Service Order Request*, the Distributor will still be entitled to charge the approved fee under applicable law.

4. COMMUNICATIONS REGARDING CUSTOMERS AND SYSTEMS DATA

4.1 *NEM Representative*

If the Retailer is not a *market customer*, it must notify the Distributor of its *NEM Representative*. The Retailer must notify the Distributor of any change in the identity of its *NEM Representative* as soon as practicable after the change.

5. ADDITIONS AND DELETIONS OF CUSTOMERS

5.1 Commence to apply

This Agreement will commence to apply in relation to a *customer* for a *connection point* as follows:

- (a) where that *customer* does not have a *retail contract* with the Retailer as at the *commencement date*, on the earlier of:
 - (i) the date on which that *customer* makes an application or request to the Retailer for *connection*;
 - (ii) the commencement of that *customer's retail contract* with the Retailer for that *connection point*; and
 - (iii) the date on which the Distributor is notified through *CATS* that the Retailer is *financially responsible* for that *customer's connection point*;
- (b) where that *customer* does have a *retail contract* with the Retailer as at the date of this Agreement, on the date of this Agreement.

5.2 Cease to apply

This Agreement will cease to apply in relation to a particular *customer* for a *connection point* on the earlier of the date on which:

- (a) the *customer's retail contract* with the Retailer for that *connection point* ends and is not replaced with another *retail contract*;
- (b) the Distributor is notified through *CATS* that the Retailer or its *NEM Representative* ceases to be *financially responsible* for that *customer's connection point*; and
- (c) the *connection contract* between the Distributor and *customer* ends and is not replaced with another *connection contract*.

6. GSL PAYMENTS

6.1 Retailer Reimbursement

If:

- (a) the Retailer:
 - (i) receives notification of a matter relevant to the Distributor's compliance with a *GSL* and the Retailer delays or fails to pass on that information to the Distributor; or
 - (ii) requests a disconnection; and
- (b) as a result of that delay, failure or request, the Distributor is required to make a payment to the *customer* as a result of failing to satisfy a *GSL*,

then the Retailer must reimburse the Distributor for that portion of the payment made to the *customer* which is attributable to the Retailer's delay, failure or wrongful action in making a request.

However, a Retailer will not be liable to reimburse the Distributor for a wrongful disconnection *GSL* where the Distributor's actions or omissions caused the Retailer to request the disconnection of the wrong *premises* (for example, where the Retailer has relied on *MSATS* data in establishing the *NMI* which is used in the request for disconnection).

6.2 Notification

The Retailer must notify the Distributor (or such employee of the Distributor notified by the Distributor to the Retailer from time to time) where it is aware that the Distributor is required to provide a *GSL* payment to a *customer* under the *Electricity Distribution Network Code*.

7. ADJUSTMENT

7.1 Non-payment

If, due to a matter for which the Retailer may be indemnified under the *applicable laws*, a *customer* does not pay an account issued by the Retailer in full, the Retailer may off-set the amount of that shortfall from payments due to the Distributor, provided that the Retailer has:

- (a) promptly given the Distributor details of the relevant *customer*, the amount outstanding, the reasons of the non-payment by the *customer*, and such other information as the Distributor may reasonably request; and
- (b) been unable to recover the amount due from the customer within 60 days, after using reasonable endeavours to do so.

Nothing in this clause limits the Distributor's rights under clause 9.1 in relation to a *customer's* complaint or *Claim*.

8. TERMINATION

8.1 Termination events

A party may, by giving 24 hours' notice in writing to the other party (the '*defaulting party*'), terminate this Agreement if the *defaulting party*'s:

- (a) *retailer authorisation or distribution authority* (as the case may be); or
- (b) registration as a *Market Customer or Network Service Provider* (as the case may be) under the *National Electricity Rules*,

is terminated.

8.2 Distributor may terminate

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8.3 Notice to Regulator

The party exercising a right of termination under this clause must inform the *Regulator* of the termination within 1 *business day* of the termination occurring.

8.4 Termination of any previous Coordination Agreement

Any agreement for the coordination of the parties' rights and obligations, entered into or as otherwise may be required to be entered into under *applicable law*, that was in force between the Distributor and the Retailer prior to the commencement of this Agreement is hereby terminated.

8.5 Existing rights

The parties' rights to terminate this agreement will be without prejudice to the parties' rights to pursue relief by way of damages, injunction or specific performance in respect of a breach of this agreement. Without limiting the foregoing, each party shall be entitled to render an invoice to the other party for services provided and not invoiced up to and including the date of termination, and any such invoice will be payable in accordance with the *applicable laws*.

8.6 Distribution Services after Termination

Notwithstanding the termination of this Agreement, the Distributor and the Retailer acknowledge that the Distributor may continue to provide *customer connection services* in respect of any *customer* of the Retailer until the first to occur of the events specified in clause 5.2. In respect of any such *customer connection service* provided after termination of this Agreement, all provisions of this Agreement which relate to the provision of *customer connection services* shall continue to apply.

9. ENQUIRIES, COMPLAINTS AND CLAIMS

9.1 Claims and demands

A party (the '*indemnified party*') must notify the other party (the '*responsible party*') of any *Claim* for which it may be indemnified under the *applicable laws* and must:

- (a) permit the *responsible party*, entirely at the *responsible party's* expense, to defend or settle the *Claim* as the *responsible party* sees fit, or, where the *responsible party* does not elect to defend or settle the *Claim*, to have a watching brief and be kept fully informed by the *indemnified party* of the progress of the *Claim*; and
- (b) provide the *responsible party*, at the *responsible party's* expense, with such assistance in respect of the *Claim* as the *responsible party* may reasonably request.

If the *responsible party* elects to take over conduct of a *Claim* as contemplated in paragraph (a) the *responsible party* must:

- (c) use all reasonable endeavours to minimise the time taken to defend or settle the *Claim*;
- (d) consult with and where reasonably possible, take account of the views of the *indemnified party* in relation to the progress of the *Claim*; and
- (e) if it becomes aware that the *indemnified party* may have some liability in respect of that *Claim* for which the *indemnified party* will not be indemnified under clause **Error! Reference source not found.**, notify the *indemnified party* of that fact, consult with and keep the *indemnified party* informed in respect of the progress of that *Claim* and comply with the provisions of clause 9.2 as if references in that clause to the '*indemnified party*' were to the '*responsible party*', and vice versa.

9.2 No admissions

Except where required by a law to do so, the *indemnified party* must not, in relation to any of the matters referred to in clause 9.1 or in the *applicable laws*:

- (a) make any admission or representation prejudicial to the *responsible party*;
- (b) agree to any compromise or settlement;
- (c) do anything else that may be prejudicial to the *responsible party*,

without the *responsible party's* written consent.

9.3 No unauthorised representations

The *indemnified party* must not make any representations or warranties to a third party concerning any goods or services being provided by the *responsible party* to that third party (including any representation concerning the nature and quality of any goods or services being provided by the *responsible party* to the third party) which the

indemnified party is not authorised by this Agreement or otherwise by the *responsible party* to make.

10. ADJUSTMENT

10.1 General

As between the parties the Retailer will, in accordance with the requirements of the *applicable law*, recover from *customers* amounts undercharged or pay to *customers* amounts overcharged, as a result of the Retailer's or Distributor's act or omission.

10.2 Undercharging

If a *customer* is undercharged as a result of the act or omission of the Retailer or Distributor and the Retailer is prevented by the *applicable law* from recovering from the *customer* the full amount undercharged, then if:

- (a) the undercharging resulted from the Retailer's act or omission, the Retailer will pay to the Distributor the amount of the *distributor charges* specified in a *statement of charges* undercharged to that *customer* which are not permitted to be recovered under the *applicable law* from that *customer*; or
- (b) the undercharging resulted from the Distributor's act or omission, the Distributor will pay to the Retailer the amount of the Retailer's charges undercharged to that *customer* which are not permitted to be recovered under the *applicable law* from that *customer* or which the Retailer using reasonable endeavours is unable to recover from the *customer*.

Each party must notify the other as soon as possible after it becomes aware that a *customer* has been undercharged as a result of its act or omission.

10.3 Overcharging

If a *customer* is overcharged as a result of the Distributor's act or omission, the Retailer may, subject to clause 10.4, deduct an amount representing the Distributor's proportion of that overcharged amount from the next payment due to the Distributor under clause 8.

The Distributor must notify the Retailer as soon as possible after it becomes aware that a *customer* has been overcharged as a result of the Distributor's act or omission.

10.4 Steps before deduction

Before deducting any amount from payments due to the Distributor under clause 10.3, the Retailer must give the Distributor an opportunity to determine the cause of the overcharging.

11. RESOLUTION OF DISPUTES

11.1 National Electricity Rules disputes – first stage dispute resolution

If any dispute, controversy or *Claim* (*‘dispute’*) arises between the parties under or in relation to this Agreement, in relation to which the dispute resolution regime provided for in clause 8.2 of the *National Electricity Rules* otherwise applies, then the dispute resolution regime provided for in clause 8.2 of the *National Electricity Rules* will apply to that *dispute*.

11.2 Non-National Electricity Rules disputes – first stage dispute resolution

- (a) If a dispute under or in relation to this Agreement, other than a *dispute* referred to in clause 11.1, arises between the parties a party may, by written notice, refer the *dispute* to resolution in accordance with this clause. The notice shall state that it is a notice under this clause and shall identify the *dispute* concerned and the clauses of this agreement relevant to the *dispute*.
- (b) The parties will use their reasonable endeavours to resolve the *dispute* within a period of 10 *business days* from the service of the notice under clause 11.2(a).
- (c) If the *dispute* remains unresolved at the end of the period referred to in clause 11.2(b) then either party may require that the *dispute* be determined under clause 11.3.

11.3 Non National Electricity Rules Disputes – reference to Chief Executives or nominees

- (a) Where clause 11.2(c) applies, either party may, by written notice, refer the *dispute* to resolution by the respective Chief Executives (or the Chief Executives’ nominee) of the parties whose resolution, if so reached, shall be binding in accordance with this clause.
- (b) The Chief Executives (or their nominees) will use their reasonable endeavours to resolve the *dispute* within a period of 10 *business days* from the service of the notice under clause 11.3(a).
- (c) If the *dispute* remains unresolved at the end of the period referred to in clause 11.3(b) then either party may require that the *dispute* be determined under clause 11.4.

11.4 Non National Electricity Rules Disputes – reference to and appointment of Independent Expert

- (a) Where clause 11.3(c) applies, either party may require that the *dispute* be determined by an independent expert appointed in accordance with clause 11.4(b) (*‘Independent Expert’*).
- (b) The party wishing to have the *dispute* determined by an *Independent Expert* will give written notice to that effect to the other party specifying the nature of the *dispute*. The parties will meet and use all reasonable endeavours to agree upon the identity of the *Independent Expert*, but if they are unable to agree within 5 *business days* of the notice, then either party may refer the matter to the

President for the time being of the Law Society of Queensland (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Law Society of Queensland), to nominate a suitably qualified person to act as the *Independent Expert* to determine the *dispute*.

11.5 Non-National Electricity Rules Disputes – role of Independent Expert

The *Independent Expert* will:

- (a) act as an expert and not as an arbitrator;
- (b) have no interest or duty which conflicts, or which may conflict, with his or her function as the *Independent Expert*;
- (c) determine the genuineness or otherwise of a *dispute*;
- (d) not be a former or current employee or representative of either party or of a related body corporate of either of them;
- (e) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position; and
- (f) treat all matters related to the *dispute*, including the existence of the *dispute*, as confidential.

11.6 Non-National Electricity Rules Disputes – representation and evidence

Each party:

- (a) may be legally represented at any hearing before the *Independent Expert*;
- (b) will be entitled to produce to the *Independent Expert* any materials or evidence which that party believes is relevant to the *dispute*; and
- (c) will make available to the *Independent Expert* all materials requested by him or her and all other materials which are relevant to his or her determination.

11.7 Non-National Electricity Rules Disputes – rules of evidence

The *Independent Expert* will not be bound by the rules of evidence.

11.8 Non-National Electricity Rules Disputes – power

The *Independent Expert* will have the power to inform himself or herself independently as to the facts to which the *dispute* relates and to take such measures as he or she thinks fit to expedite the determination of the *dispute*.

11.9 Non-National Electricity Rules Disputes – determination

The *Independent Expert* will make a determination on the *dispute* and:

- (a) will determine what, if any, adjustments may be necessary between the parties;
or

- (b) if relevant, determine the amendments required to the terms of this Agreement.

The determination of the *Independent Expert* will be, in the absence of bias or manifest error, final and binding upon the parties.

11.10 Non-National Electricity Rules Disputes – costs

The costs in relation to a determination by the *Independent Expert* will be dealt with as follows:

- (a) the remuneration of the *Independent Expert* will be borne equally by the parties;
- (b) unless the parties otherwise agree, the *Independent Expert* will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference, and that party will bear those costs accordingly; and
- (c) the parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the *Independent Expert*.

11.11 Non-National Electricity Rules Disputes – obligations not suspended

Except as otherwise provided by this Agreement, no party is relieved from performance of an obligation during the investigation and determination of a *dispute* by an *Independent Expert*.

11.12 Disputes generally

- (a) No party may have recourse to litigation without first having complied with this clause 10.
- (b) This clause 10 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

11.13 Survival

This clause 10 survives the termination or expiration of this Agreement.

12. ASSIGNMENT AND DISPOSAL

12.1 General

Subject to clauses 12.3 and 12.4, a party (*'disposing party'*) must not *dispose* of all or any part of its right, title and interest under this Agreement without the consent of the other party (*'consenting party'*).

12.2 Consent

If a *disposing party* requests the *consenting party* to give its consent to a *disposal* under clause 12.1 then the *consenting party* must not unreasonably withhold or delay that consent or give that consent subject to unreasonable conditions.

12.3 Disposal by force of law

If, by force of a law in Queensland, the right, title, interest and obligations (whether arising before or after the transmission, transfer, vesting or assumption referred to below) of the *disposing party* under this Agreement are, or are expressed to be, transmitted, transferred or vested in, or assumed by, an assignee, then that transmission, transfer, vesting or assumption (as the case may be) is effective and does not require the *consenting party's* consent under clause 12.1.

12.4 Other permitted disposals

A *disposing party* may, without the consent of the other party, *dispose* of any or all of its rights, obligations and interest under this Agreement to a person if that person:

- (a) is an entity to which all or a material part of the assets of the *disposing party* are transmitted, transferred or vested as part of a reconstruction or privatisation of the *disposing party*;
- (b) has all the authorities, registrations and approvals necessary for that person to own, operate or control the relevant electricity business in Queensland; and
- (c) executes and delivers to the *consenting party*, a deed prior to the *disposal* by which the assignee agrees to assume obligations (whether arising before or after the disposal) which are substantially equivalent to the *disposing party's* obligations under this Agreement.

12.5 Execute documents

Each party must execute all documents reasonably required to effect the *disposals* contemplated by clauses 12.1 to 12.4.

13. NOTICES

13.1 Method of Giving Notices

A notice, consent, approval or other communication (in this clause 13 called a '*notice*') given under this Agreement, shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (b) sent by pre-paid mail; or
- (c) sent by electronic mail,

to that person's address.

A *notice* given pursuant to rules 99 or 100 of the *National Energy Retail Rules* may be given in any reasonable manner as notified from time to time by the Distributor in the Distributor's *Operational Procedures*.

The requirements of this clause 13.1 do not apply to communications between the parties under the *B2B Procedures*.

13.2 Time of Receipt

A *notice* given to a person in accordance with this clause 13 is treated as having been given and received:

- (a) if delivered, on the day of delivery if a *business day*, otherwise on the next *business day*;
- (b) if sent by pre-paid mail, on the second *business day* following posting; and
- (c) if transmitted by electronic mail, on the day of the transmission if transmitted before 5.00pm on a *business day*, otherwise on the next *business day*.

13.3 Address for Notices

For the purposes of this clause 13, a party may take the address of the other party to be the last address notified to it by that other party.

14. CHANGES TO APPLICABLE LAW

14.1 Amendments to Agreement

If after commencement of this Agreement:

- (a) an *applicable law* is introduced or commences operation;
- (b) an *applicable law* is modified, re-enacted or substituted; or
- (c) the interpretation of an *applicable law* changes,

then, subject to clause 14.2, this Agreement will be interpreted (as far as possible) in such a way as to enable compliance with that *applicable law*.

14.2 Negotiation

If any of the events referred to in clause 14.1 has or will have a material effect on the position of either party, the parties will negotiate in good faith any amendments required to be made to this Agreement as a result of that event to return the parties substantially to their respective positions under this Agreement prior to event occurring. If the parties are unable to agree upon such amendments within 28 days of commencing negotiations, that dispute will be resolved in accordance with clause 10 of this Agreement.

15. GENERAL

15.1 Entire Agreement

This Agreement constitutes the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

15.2 Waiver

A failure of a party at any time to require full or part performance of any obligations under this Agreement does not affect in any way the rights of that party to require that performance subsequently.

15.3 Variations to Agreement

No variation of this Agreement will be effective unless it is in writing and signed by the parties.

15.4 Severability

Any provision of this Agreement which is invalid or unenforceable may (without affecting any other provision) be read down so as to ensure it is valid and enforceable during that period without affecting the remaining provisions of this Agreement. If that provision cannot be so read down, then it will not operate between the parties until (if at all) it becomes valid and enforceable.

15.5 Remedies Cumulative

The rights and remedies provided in this Agreement do not exclude any rights or remedies provided by any *applicable law*.

15.6 Governing Law

This Agreement is governed by the laws of Queensland and the parties submit to the jurisdiction of the courts of that State.

15.7 No Agency or Partnership

Except as provided for in clause 17.8, nothing in this Agreement constitutes any agency, partnership or joint venture relationship between the parties.

15.8 Costs

- (a) Subject to clause 15.8(b), each party will bear its own legal and other costs in relation to the negotiation and documentation of this Agreement.
- (b) Each party will bear half of any stamp duty payable in respect of this Agreement.

16. CONFIDENTIALITY

16.1 General Obligation

- (a) For the purposes of this Agreement, '*Confidential Information*' means:
 - (i) the terms of this Agreement and the operations and dealings under this Agreement; and
 - (ii) all information exchanged between the parties under this Agreement or during the negotiations preceding the signing of this Agreement,

but excludes information which is in the public domain or which is lawfully obtained from another source.

- (b) Except as otherwise permitted in this Agreement:
- (i) each party (**‘recipient’**) must treat as confidential all *Confidential Information* of the other party (**‘disclosing party’**) in its possession;
 - (ii) a *recipient* may not disclose *Confidential Information* of the *disclosing party* to third parties without the prior written consent of the *disclosing party*; and
 - (iii) a *recipient* must take reasonable precautions to ensure that its representatives maintain the confidentiality of that *Confidential Information*.
- (c) A *recipient* may make such disclosures of *Confidential Information* as are required by law or by the rules of any recognised stock exchange or by an Authority having jurisdiction over the *recipient*.
- (d) Where the *recipient* of *Confidential Information* is a Government Owned Corporation, it may make such disclosures of *Confidential Information* as are required by its Shareholding Ministers or their advisors, provided that the recipient of the *Confidential Information* is advised of its confidential nature and requested also to hold the *Confidential Information* in confidence and that disclosure of that information does not result in a breach of any *applicable law*.
- (e) To the extent practicable, before disclosing *Confidential Information* in reliance on clauses 16.1(c) or 16.1(d), a *recipient* must give reasonable notice to the *disclosing party* that its *Confidential Information* is going to be disclosed, including in that notice reasonable details of the circumstances of the proposed disclosure.
- (f) A *recipient* may disclose *Confidential Information* to any of the undermentioned persons whose legitimate interests reasonably require disclosure and who have first agreed in writing with the *disclosing party* to be bound by the confidentiality obligations imposed upon the *recipient* under this Agreement:
- (i) any financier, prospective financier or recognized ratings agency;
 - (ii) any employee or any professional adviser;
 - (iii) any assignee or bona fide prospective assignee;
 - (iv) any third party or their advisors in connection with the proposed *disposal* of the recipient, any of its substantial assets or all or a significant part of its business undertaking.
- (g) If this Agreement permits a *recipient* to disclose *Confidential Information* to another person for a purpose, the *recipient* shall use all reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

- (h) The rights and obligations contained in this clause 16 shall survive termination of this Agreement, and shall continue in full force and effect after such termination for five years.

For the purposes of this Agreement, information is not generally and publicly available merely because it is known to *AEMO*, an Authority, another Network Service Provider, a generator or another retailer.

17. GST

17.1 Definitions

In this clause:

‘**Adjustment Event**’ and ‘**Adjustment Note**’ have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

‘**GST Charge**’ has the meaning given in clause 17.3;

‘**GST Rate**’ means the rate at which *GST* is payable in respect of a *Taxable Supply* under the *GST law* from time to time;

‘**Input Tax Credit**’ has the meaning given in section 195-1 of the *A New Tax System (Goods And Services Tax) Act 1999 (Cth)*;

‘**Recipient**’ means the party who receives a *Taxable Supply* under this Agreement;

‘**Supplier**’ means the party who supplies a *Taxable Supply* under this Agreement.

17.2 Effect of GST on Indemnities and Similar Payments

If an amount of money is payable by one party (‘*payer*’) to the other (‘*payee*’) as an indemnity or reimbursement or otherwise calculated by reference to a loss, cost, expense or other amount paid or incurred by the *payee* (an ‘*indemnity amount*’) then:

- (a) the amount that would otherwise be payable must be reduced by the amount of any *Input Tax Credit* to which the *payee* is entitled in respect of the *indemnity amount*; and
- (b) the *payee* must, if required by the *payer*, provide reasonable substantiation of the amount of *Input Tax Credit* to which the *payee* is entitled, or of the fact that the *payee* is not entitled to *Input Tax Credits*, as the case may be.

17.3 GST Charge for Taxable Supplies

If and to the extent that any amount payable by one party (‘*Recipient*’) to the other (‘*Supplier*’) under this Agreement is consideration for a *Taxable Supply* by the *Supplier* then in addition to the amount that would be payable otherwise than under this sub-clause (‘*base amount*’) the *Recipient* must, if the *Supplier* issues a valid *Tax Invoice* for the *base amount* and *GST Charge*, pay a *GST Charge* calculated by multiplying the *base amount* by the *GST Rate*.

17.4 Non-monetary Consideration

If a supply made under this Agreement is a *Taxable Supply* made for non-monetary consideration then:

- (a) the *Supplier* must provide the *Recipient* with a valid *Tax Invoice* which states the nature of the *Taxable Supply* and the nature and *GST* inclusive market value (within the meaning of the *GST law*) of the non-monetary consideration; and
- (b) the *Recipient* must pay the *Supplier* a *GST Charge* equivalent to the *GST* payable by the *Supplier* on the *Taxable Supply*.

17.5 Time for Payment of GST Charge

Subject to the *Recipient* having received a valid *Tax Invoice*, the *Recipient* must pay a *GST Charge* payable under this clause at the same time as the base payment or any part of the base payment is due and payable by the *Recipient*

17.6 Tax Invoices and Adjustment Notes

In respect of any *Taxable Supply* under this Agreement, the *Supplier* must provide to the *Recipient*:

- (a) a *Tax Invoice* when consideration is claimed or payable; and
- (b) an *Adjustment Note* in respect of any *Adjustment Event*.

17.7 Registration

Each party must be registered for *GST* purposes.

17.8 Agency arrangements for GST purposes

The Distributor appoints the Retailer as its agent for *GST* purposes in order to bill and collect any *distributor charges* due from *customers* to the Distributor under the relevant *connection contracts* for those *customers*.

17.9 Scope of agency

To the extent that the Retailer, in issuing bills to *customers*, acts as the Distributor's agent for *GST* purposes:

- (a) the Retailer must take all reasonable steps to ensure that acts done on behalf of the Distributor comply with the Distributor's obligations to *customers* under the *GST law*, and in particular that any bill issued to a *customer* is issued in the form and manner required by the *GST law* for a *Tax Invoice* or, as applicable, an *Adjustment Note*;
- (b) the Retailer is entitled to assume that any amount stipulated in the Distributor's *statement of charges* in respect of a *customer* is the full amount chargeable by the Distributor (including any amount which the Distributor includes in its charges to cover *GST* obligations); and

- (c) the Distributor must do all acts and execute all documents which are reasonably necessary to be done in order to permit the Retailer to comply with its obligations under clause 17.9(a), and the Retailer must inform the Distributor of its requirement for such acts and documents.

17.10 Arrangement under s 153-B or other provision of the GST Law

- (a) The parties acknowledge that it is contemplated there may be a change in the *GST law* (a '**153-B amendment**') to the effect that where a party ('**agent**') who issues bills to and collects money from a *customer* on behalf of another party ('**principal**') in respect of *Taxable Supplies* made by the *principal* to the *customer*, subject to the *agent* and *principal* entering into an agreement that complies with specified criteria ('**complying agreement**') the law will deem that:
 - (i) there is a *Taxable Supply* by the *principal* to the *agent*, and the money paid by the *agent* to the *principal* is consideration for the *Taxable Supply*; and
 - (ii) there is a *Taxable Supply* by the *agent* to the *customer*, and the money paid by the *customer* to the *agent* is consideration for the *Taxable Supply*.
- (b) If there is a *153-B amendment*, the parties must negotiate in good faith to enter into a *complying agreement*, and to amend this Agreement accordingly.

18. FORCE MAJEURE

18.1 Suspension of obligations

If a party is unable wholly or in part to perform on time as required any obligation under this Agreement (other than an obligation to pay money) by reason of the occurrence of a *force majeure event*, that obligation shall be suspended, without liability, so far as the party's ability to perform is affected by the *force majeure event*.

18.2 Mitigation of force majeure event

A party affected by a *force majeure event* shall use its best endeavours to remove the effect of such *force majeure event* affecting its performance of this Agreement, but nothing in this clause requires it to settle any industrial dispute otherwise than as that party in its absolute discretion sees fit.

18.3 Notice

Subject to clause 18.2, if a party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a *force majeure event*, it shall as soon as reasonably practicable thereafter give to the other party notice containing full particulars of the *force majeure event* including its nature and likely duration, the obligations affected by it and the nature and extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.